

I. Introduction and Assignment

1. On April 8, 2014, we filed a report (the “April Report”) analyzing potential benefits and video/advertising competition issues related to the Comcast – Time Warner Cable Inc. (“TWC”) transaction (the “TWC transaction”).¹ In that report, our analyses assumed that systems serving approximately three million video customers would be divested, but without knowing the specifics of the scope and locations of divestitures, and without accounting for any system exchanges.

2. In this report, we have been asked by counsel for Comcast Corporation (“Comcast”) to supplement our analyses to account for an April 25, 2014 agreement between Comcast and Charter Communications (“Charter”) on a series of transactions, under which Comcast, conditional on the completion of the proposed TWC transaction, will divest systems serving a net of approximately 3.9 million video customers to Charter and to a newly formed, independent, publicly traded company. Specifically, the divestiture will be implemented through three separate transactions (jointly, the “divestiture transactions”): (1) Comcast will sell systems to Charter that currently serve approximately 1.5 million TWC subscribers; (2) Comcast will transfer to Charter systems serving approximately 1.5 million existing TWC subscribers and in return acquire from Charter systems serving approximately 1.6 million existing Charter subscribers; and (3) Comcast will spin off systems that serve approximately 2.5 million existing Comcast subscribers to a new, independent, publicly traded cable company (“SpinCo”) that will be partially owned by Charter, but in which Comcast will have no ownership interest or management role.

3. Following the TWC transaction and the divestiture transactions, Comcast will have approximately 29 million MVPD customers – less than 29% of MVPD customers nationally. In the divestiture transactions, Comcast will primarily divest its and TWC’s cable systems in Alabama, Indiana, Kentucky, Michigan, Minnesota, Ohio, Tennessee, and Wisconsin, including all of Comcast’s cable systems in Detroit, Minneapolis-St. Paul, and Indianapolis, and all of TWC’s cable systems in Cleveland, Columbus, Cincinnati, and Lexington. The combined

¹ Declaration of Gregory L. Rosston and Michael D. Topper, April 8, 2014.

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company will acquire certain Charter cable systems, primarily in California, Georgia, Maryland, New England, New York, North Carolina, Oregon, Tennessee, Texas, Virginia, and Washington. In addition, certain TWC local/regional programming networks will be divested to Charter,² certain Comcast local/regional programming networks will be divested to SpinCo,³ and Comcast will acquire a small amount of local programming from Charter.⁴

4. Our qualifications and curricula vitae are included in our April Report.

II. Summary of Opinions

5. The divestiture transactions do not change the conclusions in our April Report that the TWC transaction will generate significant competitive benefits and efficiencies. We explained that these efficiencies will arise from the ability to extend national fixed cost investments such as research and development across a larger overall customer base. Since our analysis of the TWC transaction accounted for the divestiture of systems, the announced divestiture transactions will not reduce those benefits; in fact, additional competitive benefits and efficiencies will flow from the increased regional clustering provided by the divestiture transactions. In particular, the divestiture transactions will maintain and enhance the benefits described in our April Report:

- Comcast customers (including the new customers it obtains from Charter) will realize the benefits of national economies of scale, sharing of current complementary technologies and services, and expanded geographic reach identified in our April Report because the divestitures are only slightly larger than the level we assumed.
- By expanding its contiguous service areas in certain regions, Comcast will be able to achieve efficiencies from geographic clustering. Economies of scale at the regional level should lead to greater efficiencies in network infrastructure and upgrades; in operational, marketing, and administrative functions; and in customer service.
- After the divestiture transactions, Comcast will expand its contiguous service areas in certain regions, which will allow the benefits of expanded geographic reach described in our April Report to extend more broadly in those regions, including allowing Comcast to serve more regional businesses on its own network. This, in turn, will

² The TWC networks to be divested to Charter include Time Warner Cable SportsChannel (Cincinnati/Dayton), Time Warner Cable SportsChannel (Cleveland/Akron), Time Warner Cable SportsChannel (Columbus/Toledo), Time Warner Cable Live Radar (Columbus), Time Warner Cable Local Weather (Cleveland/Akron), Time Warner Cable SportsChannel (Milwaukee, Green Bay), and cn2 in Kentucky.

³ Comcast Television Network (Michigan) and Hoosier TV (Indiana).

⁴ Charter TV3 in Worcester, MA; a local origination channel in the state of Washington; and Channel 101/181 in central California.

lead to lower prices and improved service for business customers; and additional investments spurred by new business opportunities will redound to residential customers' benefit as well. Expansion of its contiguous service areas will also provide Comcast a greater incentive to provide its customers with a more extensive network of Wi-Fi access points.

6. In our April Report, we concluded that the TWC transaction does not raise any competition concerns in video distribution, programming acquisition or selling, or video advertising. The divestiture transactions do not change those conclusions:

- At the national level, the divestiture transactions will reduce Comcast's national share of MVPD customers. This reduction in national share does not raise any competitive concerns for video distribution, program buying, program selling, or video advertising, especially since the TWC transaction raises no competitive concerns for these services.
- In certain geographic regions, the divestiture transactions will lead to modest increases in customers served by the combined company. As we demonstrate further below, this additional clustering does not raise competitive concerns for video distribution, program buying, program selling, or video advertising in any region.

III. Competitive Benefits and Efficiencies

7. The divestiture transactions do not fundamentally change the transaction-specific efficiencies arising from the TWC transaction. As we described in our April Report, those efficiencies primarily stem from three economic mechanisms: national economies of scale, expanded geographic reach, and sharing of current complementary technologies and services. All of these mechanisms still apply, and the divestiture transactions provide an additional, related economic mechanism by which Comcast will realize efficiencies, namely, economies of scale at the regional level.

A. National Economies of Scale

8. Following the divestitures, the combined company will retain sufficient scale nationally to realize the economies of scale discussed in our April Report, which assumed a divestiture of systems serving three million subscribers nationwide.⁵ While the divestiture transactions involve a net reduction of approximately 3.9 million customers nationally, the difference of 0.9 million

⁵ Rosston-Topper April Report, ¶¶ 44–57.

from the level we assumed is just 3% of the combined company's total customer base and will not materially change the scale efficiencies we identified. The increase in Comcast's subscriber base after the TWC and divestiture transactions will justify greater fixed cost investment in research and development. As we discussed, increased investment will lead to more advanced services being introduced more rapidly.⁶

B. Economies of Scale at the Regional Level

9. In addition to the substantial benefits from national economies of scale described in our April Report, the acquisition of contiguous systems from Charter will allow Comcast to achieve further efficiencies from geographic clustering in certain regions, which in turn should bring additional benefits to customers. These economies of scale at the regional level include efficiencies in network infrastructure and upgrades; in operational, marketing and administrative functions; and in customer service.⁷ We discuss each of these areas of benefits in more detail below.

10. In order to provide advanced services to customers (e.g., digital cable, DOCSIS 3.0/3.1), Comcast incurs large fixed costs. As discussed in our April Report, additional subscribers across the country make such fixed cost investments more profitable.⁸ Comcast must also incur fixed costs at the regional level for local network infrastructure and other equipment.⁹ Comcast can more readily justify making these regional fixed cost investments only when there is a sufficiently large potential customer base in a region to use these services. Because enabling

⁶ Rosston-Topper April Report, ¶¶ 44–57.

⁷ The economic benefits of regional economies of scale have been recognized by the Commission in previous cable transactions and Commission proceedings. See, e.g., *Applications Filed for the Transfer of Control of Insight Communications Company, Inc. to Time Warner Cable, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd. 497 (2012), ¶ 24; *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, Report on Cable Industry Prices, 24 FCC Rcd. 259 (2009), ¶ 28; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd. 542 (2009), ¶ 180; *Adelphia Communications Corporation – Time Warner Cable Inc. Transfer*, Memorandum Opinion and Order, 21 FCC Rcd. 8203 (2006), ¶ 271; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, 24 FCC Rcd. 542 (2004), ¶ 132; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, 17 FCC Rcd. 1244 (2002), ¶ 140; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixth Annual Report, 15 FCC Rcd 978 (2000), ¶ 162; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifth Annual Report, 13 FCC Rcd. 24284 (1998), ¶ 144; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Second Annual Report, 9 FCC Rcd. 7442 (1994), ¶¶ 152–3.

⁸ Rosston-Topper April Report, ¶¶ 44–57.

⁹ Interview with John Schanz (Executive Vice President and Chief Network Officer, Comcast Cable).

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advanced services at the regional level requires fixed costs that can be spread over more customers, it will be cost-effective for Comcast to provide its advanced services to customers in areas where it will be extending its existing footprint.¹⁰ For example, in the New England region, Comcast will be able to use its existing regional infrastructure to serve the Charter systems it acquires in Massachusetts, New Hampshire, and Connecticut.¹¹ Comcast will be able to leverage a variety of regional assets to serve the acquired systems: video-on-demand (“VOD”), local channel acquisition, and video multicast infrastructure; high-speed data infrastructure, including DNS, DHCP, and DOCSIS provisioning; backbone access to regional fiber rings; regional fiber rings (last-mile), including routers and optics; voice infrastructure; and billing, care, and provisioning infrastructure.¹²

11. In addition, by expanding its footprint regionally, Comcast will be better able to leverage its new investments in regional equipment and will therefore be more likely to undertake such investments. For example, the increased clustering of systems in certain regions should allow Comcast to deploy services like Cloud DVR, which Comcast is just starting to roll out, more widely. Deploying Cloud DVR requires investment at the regional level, including purchasing and installing network infrastructure and for transcoding the full channel lineup (particularly the local broadcast channels).¹³ These investments are essentially fixed costs at the regional level, as they need to be undertaken regardless of the number of customers being served in the region. Because additional clustering will increase the number of Comcast’s customers in certain regions, it will enable Comcast to spread the fixed regional investments over a larger customer base and thus reduce Comcast’s per-customer cost. Increased clustering should therefore lead to more and/or more accelerated provision of advanced services to systems that previously were not large enough to readily justify such investment.¹⁴

12. Moreover, the acquisition of Charter systems should generate efficiencies in certain customer service and retail operations. With the addition of contiguous Charter systems, Comcast will have more clustered customers in some areas and will be able to optimize the

¹⁰ Interview with John Schanz (Executive Vice President and Chief Network Officer, Comcast Cable).

¹¹ Interview with Kevin McElearney (Senior Vice President of Network Engineering, Comcast Cable).

¹² Interview with Kevin McElearney (Senior Vice President of Network Engineering, Comcast Cable).

¹³ Interview with Marcien Jenckes (Executive Vice President, Consumer Services, Comcast Cable).

¹⁴ Interview with John Schanz (Executive Vice President and Chief Network Officer, Comcast Cable).

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location of service centers and retail stores to best serve those clusters of customers.¹⁵ This clustering should bring Comcast's technicians and truck fleets potentially closer to its customers to support greater customer density, which may reduce drive times as well as fuel and maintenance costs.¹⁶ By increasing the efficiency of Comcast's technicians (allowing them to provide more service in a given time period, with potentially less drive time), clustering should allow Comcast to provide customer service at somewhat lower cost and possibly improve customer satisfaction.¹⁷ Comcast should also be able to provide better service to multi-location business customers in the regions where it will have clusters of subscribers because it will be able to serve more of those customers' regional locations on its own network and through its own network operations centers.¹⁸

13. Comcast should also be able to market its services more effectively and efficiently by clustering in certain regions. By increasing its footprint within certain Designated Market Areas ("DMAs"), the divestiture transactions allow Comcast to be more efficient in media placement and media buying and to reduce creative production and agency fees.¹⁹

14. Comcast's new footprint will enable the combined company to buy advertising on local broadcast television stations, local radio, or other regional advertising platforms more efficiently because more of the viewers of Comcast's ads will be passed by Comcast cable and therefore be potential customers.²⁰ For example, Comcast has not been able to market its services efficiently via local broadcast television or local radio in DMAs where it has had a small footprint (e.g., Toledo, OH, where it has only [[]]% of the MVPD subscribers).²¹ By contrast, Comcast has been able to use local broadcast television and local radio as effective marketing methods in DMAs where its footprint covers a much larger portion of the DMA (e.g., Chicago, where it

¹⁵ Interview with Greg Butz (Executive Vice President, Sales and Marketing Operations, Comcast Cable).

¹⁶ Interview with John Schanz (Executive Vice President and Chief Network Officer, Comcast Cable).

¹⁷ Interview with John Schanz (Executive Vice President and Chief Network Officer, Comcast Cable).

¹⁸ Interview with Kevin O'Toole (Senior Vice President and General Manager, New Business Solutions, Comcast Cable).

¹⁹ Interview with Greg Butz (Executive Vice President, Sales and Marketing Operations, Comcast Cable).

²⁰ Interview with Greg Butz (Executive Vice President, Sales and Marketing Operations, Comcast Cable).

²¹ SNL Kagan, "MVPD Subscribers in Q4 2013."

serves [[]] % of the MVPD subscribers).²² Clustering its systems will increase the efficiency of using DMA-wide advertising.²³

C. Expanded Geographic Reach

15. As we described in our April Report, the increase in geographic reach afforded by the TWC transaction increases Comcast's ability to serve customers whose needs span the existing geographic footprints of Comcast and TWC. After the divestiture transactions, Comcast will have a more extensive footprint in certain regions, and will no longer operate in other regions.²⁴ The divestiture transactions will allow Comcast to provide more benefits of expanded geographic reach to customers in those areas where it will have a more extensive footprint.

16. As we discussed in our April Report, business customers and potential business customers stand to benefit from the expanded geographic reach of the combined company.²⁵ In particular, Comcast's larger footprint will allow it to serve more businesses on its own network and thereby likely (1) offer lower prices through reduced costs and reduced double marginalization, and (2) provide higher quality, more consistent service.²⁶ Following the divestiture transactions, Comcast will be able to provide these benefits to business customers, particularly to businesses whose locations are concentrated in regions where Comcast will have an increased footprint. In these regions, Comcast will have more complete coverage and therefore will be able to serve more regionally concentrated businesses "on net" than it could absent the divestiture transactions.²⁷

17. For example, a regional healthcare provider, such as an MRI provider, with multiple locations in the greater Boston area would benefit from having more locations served by Comcast "on net," likely leading to a lower cost and higher quality, and more consistent

²² SNL Kagan, "MVPD Subscribers in Q4 2013."

²³ In addition, Comcast may be able to reduce creative production and agency fees by concentrating its advertising efforts and in some cases reducing or foregoing separate digital and direct mail advertising campaigns.

²⁴ As discussed in Section I, the combined company (i) will have a more extensive footprint primarily in California, Georgia, Maryland, New England, New York, North Carolina, Oregon, Tennessee, Texas, Virginia, and Washington; (ii) will no longer have a presence in Minnesota or Wisconsin; and (iii) will have a greatly reduced and only *de minimis* remaining presence in Alabama, Indiana, Kentucky, Michigan, and Ohio.

²⁵ Rosston-Topper April Report, ¶¶ 122–133.

²⁶ Rosston-Topper April Report, ¶¶ 127–131.

²⁷ As discussed in our April Report, Comcast will be able to use its larger geographic reach and additional economies of scale to provide more attractive services for enterprise customers. Rosston-Topper April Report, ¶¶ 122–138. The divestiture transactions do not change this conclusion.

service.²⁸ Similarly, a restaurant franchisee with multiple locations in and around Atlanta should benefit from being able to have more of those franchises served on Comcast's network.²⁹

18. Residential consumers should also benefit from the expansion of contiguous service areas in certain regions. For example, the acquisition of Charter systems will give Comcast a greater incentive to invest in creating a more expansive Wi-Fi network in those regions.³⁰ Post-transactions, Comcast will internalize the benefits of increased Wi-Fi availability in a way that Comcast on its own, TWC on its own, and Charter on its own do not when considering whether to invest in their own Wi-Fi networks. As discussed in our April Report, each company only considers the benefits to its own customers when making Wi-Fi investments and does not take into account the potential value to customers from the other company's adjacent systems. The divestiture transactions will give Comcast greater incentive to invest in Wi-Fi networks for customers who travel within regions in which it has a more extensive footprint.³¹ In addition to the increased investment incentives, Comcast customers will benefit from gaining access to Wi-Fi access points that Comcast likely will deploy in the additional service areas Comcast is acquiring from Charter, and thus customers across Comcast's expanded service area will enjoy more ubiquitous Wi-Fi coverage.

D. Sharing of Complementary Technologies and Services

19. The divestiture transactions should not affect the ability of the combined company to share current Comcast and TWC complementary technologies and services across its footprint. Indeed, it will allow Comcast to bring the combined company's best technology and services to customers in the systems acquired from Charter. For example, Comcast will be able to bring its industry-leading technologies and services, including its X1 interface and VOD library, as well as complementary technologies provided by TWC, to those customers.³² Advertisers will also

²⁸ Examples in this paragraph from interview with Kevin O'Toole (Senior Vice President and General Manager, New Business Solutions, Comcast Cable).

²⁹ On the other hand, businesses with locations in areas where Comcast is divesting systems will likely have fewer of their locations in areas served by Comcast's network. However, the divested areas complement Charter's and SpinCo's post-transaction footprints, and Charter and SpinCo should thus be better situated to serve multi-location businesses in those areas.

³⁰ Rosston-Topper April Report, ¶¶ 96–99.

³¹ Rosston-Topper April Report, ¶¶ 96–99.

³² As part of the divestiture transactions, Comcast will be acquiring systems from Charter that currently may not be equipped for certain advanced services. However, the specialized knowledge brought by Comcast (and TWC) to the

likely benefit from the accelerated deployment of addressable advertising on the transferred Charter systems, providing them with one-stop shopping for a consistent addressable product covering a larger pool of customers to target in certain regions.³³

IV. The Divestiture Transactions Raise No Video Programming Competitive Concerns

20. In our April Report, we showed that the TWC transaction did not raise any competitive concerns regarding video distribution, program acquisition, or program selling. In this section, we update our evaluation to address the divestiture transactions. As shown below, the combination of the TWC transaction and the divestiture transactions does not create any competitive concerns relating to video programming.

A. No Competitive Concerns in Video Distribution

21. Comcast, TWC, and Charter do not compete against one another for MVPD customers in any geographic area because their cable franchise areas do not overlap. As a result, the divestiture transactions, just like the TWC transaction, will not affect MVPD competition – after the transactions, the combined company's cable systems will continue to face the same competition from DBS, telco, and other MVPD providers (as well as OVDs) as they do now.

B. No Competitive Concerns in the Acquisition or Carriage of Video Programming

1. No Competitive Concerns in Program Acquisition

22. In our April Report, we showed that after the TWC transaction, Comcast will have the same economic incentive and business need to acquire and distribute programming of interest to its MVPD customers to compete with other distributors, that content providers will continue to be able to sell their programming to a large open field besides Comcast, and that Comcast will

transactions should speed up the deployment of advanced services to residential and business customers in the systems acquired from Charter. Rosston-Topper April Report, ¶ 66.

³³ Interview with Hank Oster (Senior Vice President, General Manager, Comcast Spotlight). Addressable advertising allows marketers to replace geographic zone targeting with advertising targeted to individual households based on demographics and other household-specific characteristics. Rosston-Topper April Report, ¶¶ 154–156.

not gain market power in program buying.³⁴ The divestiture transactions do not change these conclusions for either national or regional programming.

a) National Programming

23. The divestiture transactions involve a net divestiture of systems serving approximately 3.9 million video customers from the combined company to Charter or SpinCo, which would reduce Comcast's national share of MVPD customers to less than 29%, lower than the just below-30% national share that would result from the TWC transaction (with divestitures of three million subscribers) and that we analyzed in our April Report. Thus, the divestiture transactions do not change the conclusion that Comcast will not gain market power in acquiring national programming.

24. Some parties have expressed concern about Comcast's presence in top DMAs. Comcast will acquire Charter's cable systems in several large DMAs such as New York, Los Angeles, and Dallas-Ft. Worth where Comcast will also acquire TWC cable systems. However, as discussed in our April Report, an expanded presence in such areas will not change the combined company's need to acquire programming in these DMAs or the value to a programming supplier of reaching a Comcast, TWC, or Charter subscriber in these DMAs, and so will not give Comcast any incremental market power in program buying.³⁵ Additionally, Comcast will divest all of its and TWC's systems in three of the top 20 DMAs – Minneapolis-St. Paul, Cleveland-Akron, and Detroit – which means the combined company will have a footprint in 16 of the top 20 DMAs, the same as the number prior to the TWC transaction (although not the same 16 DMAs). Similar to our discussion of the TWC transaction, the divestiture transactions will not cause any change in competition in the top DMAs, ensuring that there is no competitive concern in program buying.

³⁴ Rosston-Topper April Report, ¶¶ 176–198.

³⁵ Rosston-Topper April Report, ¶¶ 180–184.

b) Regional Programming

25. The divestiture transactions will have no or only a very small effect on the combined company's share of MVPD customers in most of the DMAs where the combined company will have cable systems post-transactions.³⁶ In some DMAs where Comcast or TWC operate cable systems, the acquired Charter systems account for a non-trivial share of the MVPD customers. For example, the Charter systems that Comcast will acquire account for about []% or more of the MVPD subscribers in Los Angeles ([]%), Boston ([]%), Dallas-Ft. Worth ([]%), Atlanta ([]%), and a number of smaller DMAs.

26. The increased shares of MVPD customers served by the combined company in these DMAs do not affect the demand or supply of regional programming because Charter, Comcast, and TWC do not compete for customers or programming, and content providers can sell the same programming to all three distributors with near-zero incremental cost.³⁷ Comcast's increased shares within these DMAs increase the stakes in negotiation for both Comcast and programmers and do not improve Comcast's relative bargaining leverage anticompetitively.³⁸

27. Moreover, competition among distributors has increased the bargaining power of regional programming providers. Big 4 broadcast stations (both owned and operated stations ("O&Os") and affiliates) and RSNs have significant negotiating leverage even if Comcast accounts for a significant share of the MVPD subscribers in their footprint. In addition, some regional programmers, including broadcast station groups (such as Sinclair, Nexstar, Media General, Gray Television, and Gannett) and RSNs have footprints that cover multiple DMAs. For those regional programmers, the combined company's share increase in a particular DMA does not represent its share in the programmer's entire footprint, which may be smaller.

³⁶ For example, in large DMAs like New York, San Francisco-Oakland-San Jose, Houston, and Seattle-Tacoma, the Charter systems that Comcast will acquire account for less than []% of the MVPD customers in each DMA. See SNL Kagan, "MVPD Subscribers in Q4 2013"; Comcast, "DMAs/Markets Involved in Divestiture Transactions."

³⁷ Rosston-Topper April Report, ¶¶ 176–179.

³⁸ Rosston-Topper April Report, ¶¶ 189–192.

2. No Program Carriage Concerns Arising from the Divestiture Transactions

28. In our April Report, we analyzed the potential for vertical program carriage concerns arising from the TWC transaction, and concluded that the vigorous competition Comcast faces in the upstream (video programming) and downstream (video distribution) markets means an anticompetitive program carriage foreclosure strategy targeting non-affiliated programming would likely not be profitable – it would likely lead to some customers leaving Comcast while bringing little benefit to Comcast/NBCUniversal or TWC-affiliated programming.³⁹

29. The divestiture transactions reduce the number of Comcast subscribers nationally to slightly below the level we assumed in our April Report and do not increase the number of national programming networks owned by Comcast. Under these circumstances, there are no new program carriage concerns regarding national programming arising from the divestiture transactions.

30. The divestiture transactions involve the *de minimis* transfer of only three local origination channels from Charter to the combined company.⁴⁰ There are no program carriage concerns related to this very minimal programming being acquired from Charter.

31. We next consider whether Comcast's acquisition of Charter systems in some areas would increase Comcast's incentive and ability to discriminate against competitors of Comcast's or TWC's affiliated programming services in those areas.

32. As discussed earlier, in most DMAs where Comcast is acquiring Charter systems, the Charter systems account for a small share of MVPD customers. In many of the remaining DMAs where Charter has a non-trivial share of MVPD customers (e.g., Atlanta, where Charter has an []% share), Comcast does not offer any significant affiliated regional programming such as NBC O&Os or RSNs showing major professional sports. Even in those DMAs where Comcast offers affiliated regional programming and the divestiture transactions will increase Comcast's share of MVPD customers by a non-trivial amount, it would be unprofitable for

³⁹ Rosston-Topper April Report, ¶¶ 199–210.

⁴⁰ Charter TV3 in Worcester, MA; a local origination channel in Washington state; and Channel 101/181 in central California.

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Comcast to foreclose non-affiliated regional programming in light of the strong competition that Comcast faces in both upstream programming and downstream MVPD service.

33. As discussed in our April Report, Comcast's affiliated programming faces strong competition for viewers and advertisers from other non-affiliated regional (and national) programming. If Comcast were to deny carriage to a particular cable network, Comcast's affiliated networks would continue to compete for viewers, advertisers, and programming with a wide variety of non-affiliated competitive programming. In addition, denying carriage to non-affiliated programming with the ability to attract and retain subscribers would hurt Comcast's MVPD services, especially where it has a significant share of MVPD subscribers and risks losing more of them. Thus, there would unlikely be enough of a viewership increase for Comcast/NBCUniversal programming to offset the lost profits from customers that Comcast would lose to other MVPDs due to its not carrying the targeted non-affiliated programming.

34. In addition, the Commission's existing program carriage rules continue to apply and can address any competitive concerns.

C. No Competitive Concerns in the Sale of Video Programming

35. Because the divestiture transactions involve only a *de minimis* transfer of programming to Comcast, they do not increase Comcast's market power in selling programming.

36. Moreover, the divestiture transactions do not change the conclusion that the TWC transaction will not increase Comcast's incentive or ability to withhold its programming from other MVPDs or OVDs or to charge higher prices for MVPDs or OVDs to access Comcast's programming. By slightly decreasing Comcast's national share of MVPD customers, the divestiture transactions in fact lessen any program access concerns related to national programming provided to MVPDs or OVDs. In this section we analyze the competitive effects of the divestitures on the sale of regional programming, including retransmission consent for NBC and Telemundo O&O stations and affiliation agreements for Comcast- or TWC-affiliated RSNs.

1. NBC O&Os

37. Comcast will acquire Charter systems in the footprints of five of the 10 NBC O&Os (New York, Los Angeles, San Francisco-Oakland-San Jose, Dallas-Ft. Worth, and Hartford-New Haven). Of the five, Comcast will gain less than [[]]% of MVPD customers from the divestiture transactions in the footprint of the New York and San Francisco-Oakland-San Jose O&Os.⁴¹

38. While Comcast's MVPD share increase in the footprint of the Los Angeles, Dallas-Ft. Worth, and Hartford-New Haven NBC O&Os is somewhat higher (around [[]]% to [[]]%), the increase in those DMAs does not raise program access concerns.⁴²

39. First, retransmission consent agreements for O&O stations are typically negotiated as a group for all relevant O&Os within an MVPD's footprint. For example, DirecTV's and Dish's footprints include all 10 DMAs with NBC O&Os, and the acquisition of Charter systems will increase Comcast's share among MVPD subscribers across these 10 DMAs by only [[]]%.⁴³ Similarly, for AT&T and Verizon, whose footprints include eight and six DMAs with NBC O&Os, respectively, acquisition of Charter systems will only increase Comcast's shares among MVPD subscribers across these eight and six DMAs by [[]]% and [[]]%, respectively.⁴⁴

40. Given these limited share changes, the acquisition of Charter systems would not allow Comcast to capture a significantly higher share of any switchers who would leave an MVPD if, hypothetically, Comcast withheld NBC O&O's programming from the MVPD. So the acquisition of Charter systems will not raise program access foreclosure concerns related to NBC O&Os for Comcast's direct competitors.⁴⁵

⁴¹ Share calculations in the next three paragraphs are based on SNL Kagan data, informed by Comcast, "DMAs/Markets Involved in Divestiture Transactions."

⁴² After the TWC transaction and divestiture transactions, the combined company's MVPD share will be [[]]% in the Los Angeles DMA, [[]]% in the Dallas-Ft. Worth DMA, and [[]]% in the Hartford-New Haven DMA.

⁴³ After the TWC transaction and divestiture transactions, the combined company's MVPD share across the 10 DMAs with NBC O&Os will be [[]]%.

⁴⁴ After the TWC and divestiture transactions, the combined company's MVPD share across the eight DMAs served by AT&T will be [[]]%, and its MVPD share across the six DMAs served by Verizon will be [[]]%.

⁴⁵ The divestiture transactions also do not affect Comcast's incentives or ability to withhold NBC O&O programming from other cable companies. Since Comcast does not compete with these companies, it has no incentive to foreclose them from NBC O&O programming to benefit its cable business.

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41. Even if an MVPD's negotiation were limited to the footprint of a single NBC O&O, the acquisition of Charter systems would not raise program access concerns. As shown in our April Report, denying an MVPD access to NBC O&O stations has become increasingly costly due to the increasing retransmission consent fees and substantial advertising revenues generated by the O&Os.⁴⁶ Therefore, temporarily or permanently foreclosing an MVPD access to an NBC O&O would risk damaging the economic value of the station and even the network, which gives Comcast a disincentive to pursue such a strategy.

2. Telemundo O&Os

42. Comcast will acquire Charter systems in the footprint of seven of the 17 Telemundo O&Os and those systems account for a minimal or modest share of the MVPD customers in the stations' footprint.⁴⁷ As discussed in our April Report, Telemundo O&Os have much smaller viewership than NBC O&Os and face strong competition from other Spanish language programming such as Univision. Thus, there is no program access concern related to these Telemundo O&Os.

3. Comcast and TWC RSNs

43. Comcast will acquire Charter systems in the territories of seven Comcast-affiliated RSNs (one of which is also affiliated with TWC) and two TWC-affiliated RSNs offering major professional sports programming in English.⁴⁸ Charter accounts for little, if any, share of the subscribers of Comcast SportsNet Bay Area, Comcast SportsNet California, Comcast SportsNet Mid-Atlantic, Comcast SportsNet Houston, and SportsNet New York, and in particular Charter accounts for little, if any, share of the subscribers in the core of the footprint of these RSNs.⁴⁹

⁴⁶ Rosston-Topper April Report, ¶¶ 219–220.

⁴⁷ Charter systems account for less than []% of the MVPD customers in New York, San Francisco-Oakland-San Jose, and Houston; less than []% in Fresno-Visalia; and around []% to []% in Los Angeles, Dallas-Ft. Worth, and Boston.

⁴⁸ The seven Comcast-affiliated RSNs are Comcast SportsNet Bay Area, Comcast SportsNet California, Comcast SportsNet New England, Comcast SportsNet Mid-Atlantic, Comcast SportsNet Houston, Comcast SportsNet Northwest, and SportsNet New York (in which both Comcast and TWC have minority interests). The two TWC-affiliated RSNs are Time Warner Cable SportsNet (Los Angeles) and SportsNet LA. TWC provides certain services to SportsNet LA but does not own any interest in the RSN (it is 100% owned by the Dodgers).

⁴⁹ Interview with John Ruth (CFO, Comcast SportsNet). The low subscribership to these RSNs among Charter systems shows that the programming is either not accessible to the Charter systems in the area or not critical for competition in the footprint of the Charter systems.

44. Charter customers account for about {{ }}% of Comcast SportsNet Northwest's subscribers, and Comcast and Charter customers account for almost all of its subscribers, while neither DBS provider and none of the major telco MVPDs in Comcast SportsNet Northwest's territory have chosen to carry it.⁵⁰ Since these competing MVPDs do not carry Comcast SportsNet Northwest today, the acquisition of additional subscribers in Comcast SportsNet Northwest's territory does not support a theory that Comcast will have greater incentive to "deny" access to the network. Thus, the divestiture transactions raise no program access concern related to Comcast SportsNet Northwest.

45. Charter customers account for {{ }}% of Comcast SportsNet New England's subscribers, and the acquisition of Charter systems will increase the combined company's share among the RSN's subscribers from about {{ }}% to about {{ }}%.⁵¹ The incremental effect of acquiring the Charter systems is modest and does not significantly increase the number of homes passed by the combined company in the Comcast SportsNet New England footprint. Thus, the divestiture transactions do not significantly increase the number of subscribers the combined company could potentially attract from another MVPD by denying it access to Comcast SportsNet New England.

46. Similarly, for Time Warner Cable SportsNet, the divestiture transactions will increase the combined company's share of the RSN's subscribers from about {{ }}% to about {{ }}%.⁵² This modest increase does not significantly increase the incentive to deny a competing MVPD access to Time Warner Cable SportsNet.

47. Because the combined company will have no ownership interest in SportsNet LA, it will not be in a position to sacrifice the interests of the RSN to benefit the combined company's MVPD service. Thus, there is no transaction-specific program access concern related to SportsNet LA.

48. In addition, as noted in our April Report, broad distribution is important for Comcast's and TWC's RSNs, as affiliate fees account for the majority of RSN revenue and advertising

⁵⁰ Interview with John Ruth (CFO, Comcast SportsNet).

⁵¹ Interview with John Ruth (CFO, Comcast SportsNet).

⁵² Interview with Dan Finnerty (Senior Vice President, Time Warner Cable Sports). While the RSN's footprint covers some Comcast systems (which serve a small number of customers), those systems currently do not subscribe to Time Warner Cable SportsNet.

revenue also increases with subscribers. Thus, it would be costly for the combined company to deny another MVPD access to Comcast or TWC RSNs to attempt to benefit the combined company's MVPD business.⁵³

49. Finally, these potential program access concerns are essentially the same as those examined and addressed by the Commission in the NBCUniversal transaction. In all of these cases, the Commission's existing program access rules and the program access conditions agreed to in the NBCUniversal transaction serve as a backstop against any competitive concerns.

V. No Competitive Concerns in the Sale of Video Advertising

50. The divestiture transactions do not change the conclusion from our April Report that there are no competitive concerns in the sale of video advertising. There is no impact on national advertising from the divestiture transactions because, as with the TWC transaction, the divestiture transactions do not change the ownership of any national broadcast or cable networks that compete to provide national advertising.⁵⁴ With respect to local and regional advertising, the lack of overlap between Comcast, TWC, and Charter systems means that the companies do not represent different choices for an advertiser to reach a given cable household, and the divestiture transactions will therefore have little, if any, impact on local or regional cable advertising competition.

51. As discussed above, there are five DMAs in which a Charter system being acquired by Comcast overlaps with an NBC O&O broadcast station: New York, Los Angeles, Dallas-Ft. Worth, San Francisco-Oakland-San Jose, and Hartford-New Haven.⁵⁵ The acquired Charter systems also overlap with Telemundo O&O stations in New York, Los Angeles, Dallas-Ft. Worth, San Francisco-Oakland-San Jose, Boston, Houston, and Fresno-Visalia.⁵⁶ The

⁵³ Rosston-Topper April Report, ¶ 225.

⁵⁴ Rosston-Topper April Report, ¶¶ 238–239. The April Report notes that, because the TWC transaction involves no acquisition of national programming assets from TWC, the transaction can have no impact on Comcast's share of network advertising revenue. The same is true with respect to Charter, which also brings no national programming networks.

⁵⁵ The share of MVPD subscribers from acquired Charter systems is *de minimis* in New York ([]%) and San Francisco-Oakland-San Jose ([]%).

⁵⁶ The share of MVPD subscribers from acquired Charter systems is small or *de minimis* in New York ([]%), San Francisco-Oakland-San Jose ([]%), Houston ([]%), and Fresno-Visalia ([]%).

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acquisition of cable systems from Charter in DMAs with an NBC or Telemundo O&O does not create the potential for price increases for local or regional advertising for several reasons.⁵⁷

52. First, local advertising is part of a large product market that includes many different types of advertising. Second, spot cable advertising is not generally considered to be a close substitute for spot broadcast advertising. Third, NBCUniversal will continue to face numerous strong broadcast station competitors in each of these DMAs, as well as robust competition from other media, including online advertising. Fourth, cable systems have a limited advertising inventory in comparison with broadcast stations and control only approximately 15% of the total television impressions available for local advertising. Moreover, Charter's share of this small fraction of advertising inventory is only about [[]]% in these DMAs.⁵⁸

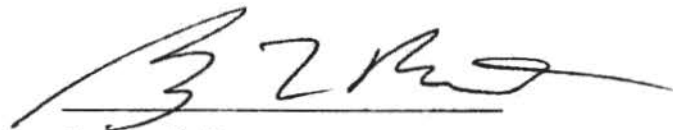
53. In sum, the small number of subscribers to Charter systems acquired in the divestiture transactions will not result in any harm to competition in the sale of video advertising.

⁵⁷ Rosston-Topper April Report, ¶¶ 242–246.

⁵⁸ As discussed above, the share of MVPD customers in acquired Charter systems is [[]]% in Los Angeles, [[]]% in Dallas-Ft. Worth, [[]]% in Boston, and [[]]% in Hartford-New Haven.

I, Gregory L. Rosston, declare under penalty of perjury that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Executed on June 3, 2014.

A handwritten signature in black ink, appearing to read 'G. L. Rosston', written over a horizontal line.

Gregory L. Rosston

I, Michael D. Topper, declare under penalty of perjury that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Executed on June 3, 2014.

A handwritten signature in black ink, appearing to read "M: 22 D. Topper", written over a horizontal line.

Michael D. Topper